

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 112 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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BHIKHABHAI A PATEL

Versus

SHASHIKANT PRABHUSHANKARBHAI

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Appearance:

MR DAKSHASH MEHTA FOR MR DD VYAS for Appellant  
MS MITA S. PANCHAL, FOR MR ND NANAVATI for Res. No. 1

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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 15/09/2000

ORAL JUDGEMENT

1. This Second Appeal is preferred by the appellant  
- original defendant, aggrieved by the judgment and order  
passed by the learned District Judge, Bhavnagar, in  
Regular Civil Appeal No. 101 of 1982, allowing the

Appeal of the plaintiff and thereby reversing the judgment and order passed by the Trial Court i.e. 5th Joint Civil Judge (JD), Bhavnagar, in Regular Civil Suit No. 536 of 1979, dismissing the suit of the plaintiff.

2. Brief facts goes to show that the present respondent filed a Regular Civil Suit No. 536 of 1979 against the present appellant for the recovery of Rs. 4,000/-, which was advanced by him on the strength of Promissory Note alleged to have been executed by the present appellant on 7th December, 1978 at Bhavnagar. The plaintiff stated that the plaintiff and defendant belongs to the same village Umrala and since the defendant was in need of money, he asked the plaintiff to advance Rs. 4,000/- and he executed the Promissory Note on 7th December, 1978 so the plaintiff gave Rs.4,000/- to the defendant by way of loan on strength of Promissory Note. Since defendant did not repay the amount, the plaintiff issued Notice and ultimately filed the suit. The defence of the defendant was of total denial to the extent that he never borrowed Rs.4,000/- from the plaintiff nor he executed any Promissory Note. After framing issues and recording of the evidence and hearing the parties, learned Trial Judge, vide his Order dated 7th April, 1982, came to the conclusion that the suit of the plaintiff was required to be dismissed and, therefore, the suit came to be dismissed. Being aggrieved, the plaintiff filed a Regular Civil Appeal No. 101 of 1982, in the Court of the District Judge at Bhavnagar, who allowed the Appeal and decreed the suit of the plaintiff. Therefore, the Second Appeal by original defendant.

3. The Trial Judge did not believe the case of the plaintiff because the instrument i.e. Promissory Note,

Exh. 31, was undated and the evidence of the plaintiff regarding the date of execution of the said Promissory Note was not believed by the Trial Judge while in Appeal learned First Appellate Court believed the evidence of the plaintiff for the execution and the date of the execution.

4. Learned Advocate Dakshash Mehta for learned Advocate Mr. D.D. Vyas and learned Advocate Ms Mita S. Panchal for learned Advocate Mr. N.D. Nanavati were heard at length.

5. Learned Advocate Mr. Dakshash Mehta sought to make out a point that firstly, the undated negotiable instruments was invalid, and that secondly, the First Appellate Court erred in placing reliance on a personal diary of the plaintiff on coming to the conclusion that the said Promissory Note was executed on 7th December, 1978. Mr Mehta urged that these both were the questions of law.

6. So far as the first contention is concerned, the 'Promissory Note' is defined under Section 4 of the Negotiable Instruments Act, 1881, which is as under :

"Promissory Note" - A "promissory note" is an instrument in writing (not being a bank note or a currency note) containing an unconditional

undertaking signed by the maker to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument. "

Nowhere it is laid down that the Promissory Note must contain a date of execution and without date, the instrument would be invalid. There is nothing in the Negotiable Instruments Act, 1881, to denote that the undated Promissory Note would be an invalid negotiable instrument. Now, therefore, when the question arises regarding undated negotiable instrument, it is always open for the parties to lead evidence regarding the date of the execution of such instruments. The plaintiff attempted to lead oral evidence regarding the date of the execution of Promissory Note at Exh. 31. Learned Trial Judge did not believe this evidence while the learned First Appellate Judge reappreciated the evidence and came to the conclusion that it was amply proved that the Promissory Note was executed by the defendant and the provisions of Section 67 of the Evidence Act were applied. The learned First Appellate Judge found that the evidence of plaintiff was totally unimpeachable and was reinforced by the evidence of one Kantibhai Jayantibhai Jasani, Exh. 33, who identified the thumb impression of the defendant of the Promissory Note. Therefore, the learned First Appellate Court came to the conclusion that the plaintiff could prove that such Promissory Note was executed by the defendant on 7th December, 1978. Even if, this process of appreciation of

evidence by the learned First Appellate Judge, is taken to be the question of law, then also, no error at all has been committed by the First Appellate Court. Grievance has been voiced forcibly by the appellant regarding the diary at Exh. 22, which being the personal diary of the plaintiff, it was urged that the First Appellate Court ought not to have placed any reliance on that.

7. It appears from the record that the learned First Appellate Judge appreciated the evidence in totality and came to the conclusion. The question that the learned Judge ought not to have relied upon the diary at Exh. 22, would be a question of fact, and could not be agitated in the Second Appeal. The finding of fact by the First Appellate Court, which is the last Appellate Court, has come to the conclusion that the Promissory Note - Exh. 31 was executed by the defendant and that too on 7th December, 1978, this Court would not find any fault in the method of appreciation of evidence, and this being the finding of fact based on appreciation of evidence, cannot be agitated in the Second Appeal because as per Section 100 of the Civil Procedure code, this Court cannot reappreicate the evidence of fact and come to a different conclusion and this being a Second Appeal, must be decided purely on substantial question of law.

8. In my view, no other substantial question of law has been raised in this Appeal, the Appeal requires to be dismissed.

9. In this view of the matter, Appeal stands dismissed with no order as to costs.

(J.R. Vora, J.)

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p.n.nair